

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSHUA R. GOOD,

Plaintiff,

v.

SHASTA COUNTY SHERIFF
DEPARTMENT,

Defendant.

No. 2:24-cv-1501 AC P

ORDER

Plaintiff, proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. Application to Proceed In Forma Pauperis

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). ECF No. 2. Accordingly, the request to proceed in forma pauperis will be granted.

II. Complaint

A. Statutory Screening

The federal in forma pauperis statute authorizes federal courts to dismiss a case if the action “(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2).

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1 A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.”
 2 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
 3 Cir. 1984). “[A] judge may dismiss IFP claims which are ‘based on indisputably meritless legal
 4 theories’ or whose ‘factual contentions are clearly baseless.’” Jackson v. Arizona, 885 F.2d 639,
 5 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as
 6 stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). The critical inquiry is whether a
 7 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis.
 8 Franklin, 745 F.2d at 1227-28 (citations omitted).

9 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the
 10 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of
 11 what the . . . claim is and the grounds upon which it rests.’” Bell Atl. Corp. v. Twombly, 550
 12 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
 13 In order to survive dismissal for failure to state a claim, a complaint must contain more than “a
 14 formulaic recitation of the elements of a cause of action;” it must contain factual allegations
 15 sufficient “to raise a right to relief above the speculative level.” Twombly, 550 U.S. at 555
 16 (citations omitted). “[T]he pleading must contain something more . . . than . . . a statement of
 17 facts that merely creates a suspicion [of] a legally cognizable right of action.” Id. (alteration in
 18 original) (quoting 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure §
 19 1216 (3d ed. 2004)).

20 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
 21 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting
 22 Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual
 23 content that allows the court to draw the reasonable inference that the defendant is liable for the
 24 misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). In reviewing a complaint under this
 25 standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg.
 26 Co. v. Trs. of the Rex Hosp., 425 U.S. 738, 740 (1976) (citation omitted), as well as construe the
 27 pleading in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor,
 28 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969) (citations omitted).

1 B. Complaint

2 The complaint alleges that the Shasta County Sheriff's Department violated plaintiff's
3 rights when he was subject to a warrantless search of his residence and illegal seizure of his
4 property after he was arrested for possessing a firearm twenty-five miles away. ECF No. 1 at 3-4.
5 As a result, plaintiff was incarcerated for eighteen months and is currently institutionalized for an
6 undetermined period. Id. at 4. After filing the complaint, plaintiff filed another document in
7 which he stated that he believes that Patty Pearson, who was his probation officer in 2011, "was
8 involved," and that his brother, ex-girlfriend, and psychologist from prison are also connected.
9 ECF No. 5 at 2.

10 C. Failure to State a Claim

11 i. Shasta County Sheriff's Department Liability

12 While "municipalities and other local government units . . . [are] among those persons to
13 whom § 1983 applies," Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690 (1978), "a municipality
14 can be liable under § 1983 only where its policies are the 'moving force [behind] the
15 constitutional violation,'" City of Canton v. Harris, 489 U.S. 378, 389 (1989) (alteration in
16 original) (quoting Monell, 436 U.S. at 694 and Polk County v. Dodson, 454 U.S. 312, 326
17 (1981)). There must be "a direct causal link between a municipal policy or custom and the
18 alleged constitutional deprivation." Id. at 385. Plaintiff does not allege facts showing that the
19 alleged violations were the result of a policy or custom of the sheriff's department rather than the
20 conduct of specific individuals.¹

21 ii. Search and Seizure

22 "It is a 'basic principle of Fourth Amendment law' that searches and seizures inside a
23 home without a warrant are presumptively unreasonable." Payton v. New York, 445 U.S. 573,

24
25 ¹ To the extent plaintiff's supplemental filing is an attempt to add individual defendants, it is not
26 a proper amended complaint and does not explain how each individual, some of whom do not
27 appear to be state actors, was involved in the violation of his rights. See Barren v. Harrington,
28 152 F.3d 1193, 1194 (9th Cir. 1998) ("Liability under § 1983 must be based on the personal
involvement of the defendant." (citing May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980)));
Marsh v. County of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012) (§ 1983 applies only to
persons who are "acting under color of state law").

1 586 (1980). Moreover, “absent exigent circumstances, a warrantless entry to search for weapons
2 or contraband is unconstitutional even when a felony has been committed and there is probable
3 cause to believe that incriminating evidence will be found within.” Id. at 587-88. It therefore
4 appears that plaintiff may have a viable Fourth Amendment claim for the warrantless search of
5 his residence and seizure of his property.² However, as addressed above, plaintiff has not alleged
6 sufficient facts to demonstrate that defendant Shasta County Sheriff’s Department is liable for any
7 violation. No individuals are alleged to have violated plaintiff’s Fourth Amendment rights.

8 iii. Arrest

9 Plaintiff alleges that his arrest for possessing a firearm violated his Second Amendment
10 right to bear arms. However, “the right secured by the Second Amendment is not unlimited,”
11 District of Columbia v. Heller, 554 U.S. 570, 626 (2008), and plaintiff has not alleged sufficient
12 facts to show his rights were violated. Notably, it appears from plaintiff’s supplemental filing
13 that he may had a prior felony conviction for stabbing his brother, and prohibitions against felons
14 possessing firearms are “presumptively lawful.” See id. at 626-27 & n.26 (“nothing in our
15 opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms
16 by felons” which are “presumptively lawful”). To the extent plaintiff is challenging the arrest
17 itself, there are no allegations demonstrating that the arrest was carried out without a warrant or
18 probable cause. See Dubner v. City and County of San Francisco, 266 F.3d 959, 964 (9th Cir.
19 2001) (“A claim for unlawful arrest is cognizable under § 1983 as a violation of the Fourth
20 Amendment, provided the arrest was without probable cause or other justification.”).

21 iv. Heck Bar

22 It appears that plaintiff was convicted of some offense in relation to the arrest, search, and
23 seizure of which he complains. Plaintiff is advised that his claims may be barred by Heck v.
24 Humphrey, 512 U.S. 477 (1994), if the allegedly illegal search and seizure led to his conviction

25 ² The court notes that if plaintiff was on probation at the time, a warrantless search may have
26 been permissible, depending upon the conditions of his probation. See United States v. Knights,
27 534 U.S. 112, 118 (2001) (“warrantless search of [probationer’s apartment], supported by
28 reasonable suspicion and authorized by a condition of probation, was reasonable within the
meaning of the Fourth Amendment”). There are many other exceptions to the warrant
requirement.

1 and the conviction has not been overturned. See Szaier v. City of Los Angeles, 632 F.3d 607,
2 611-12 (9th Cir. 2011) (holding Heck bars § 1983 Fourth Amendment claim challenging searches
3 and seizures that led to convictions).

4 D. Leave to Amend

5 The complaint does not state any cognizable claims for relief and plaintiff will be given an
6 opportunity to file an amended complaint. If plaintiff chooses to file a first amended complaint,
7 he must demonstrate how the conditions about which he complains resulted in a deprivation of his
8 constitutional rights. Rizzo v. Goode, 423 U.S. 362, 370-71 (1976). Also, the complaint must
9 allege in specific terms how each named defendant is involved. Arnold v. Int'l Bus. Machs.
10 Corp., 637 F.2d 1350, 1355 (9th Cir. 1981). There can be no liability under 42 U.S.C. § 1983
11 unless there is some affirmative link or connection between a defendant's actions and the claimed
12 deprivation. Id.; Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, "[v]ague and
13 conclusory allegations of official participation in civil rights violations are not sufficient." Ivey v.
14 Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted).

15 Plaintiff is also informed that the court cannot refer to a prior pleading in order to make
16 his first amended complaint complete. Local Rule 220 requires that an amended complaint be
17 complete in itself without reference to any prior pleading. This is because, as a general rule, an
18 amended complaint supersedes the original complaint. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
19 1967) (citations omitted), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 928 (9th
20 Cir. 2012) (claims dismissed with prejudice and without leave to amend do not have to be re-pled
21 in subsequent amended complaint to preserve appeal). Once plaintiff files a first amended
22 complaint, the original complaint no longer serves any function in the case. Therefore, in an
23 amended complaint, as in an original complaint, each claim and the involvement of each
24 defendant must be sufficiently alleged.

25 III. Motion for Appointment of Counsel

26 Plaintiff has requested the appointment of counsel. ECF No. 50. The United States
27 Supreme Court has ruled that district courts lack authority to require counsel to represent indigent
28 litigants in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In

1 certain exceptional circumstances, the district court may request the voluntary assistance of
2 counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir.
3 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).

4 “When determining whether ‘exceptional circumstances’ exist, a court must consider ‘the
5 likelihood of success on the merits as well as the ability of the [plaintiff] to articulate his claims
6 *pro se* in light of the complexity of the legal issues involved.’” Palmer v. Valdez, 560 F.3d 965,
7 970 (9th Cir. 2009) (quoting Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983)). The burden
8 of demonstrating exceptional circumstances is on the plaintiff. Id.

9 Plaintiff asserts that he is unable to afford counsel and will be limited in his ability to
10 litigate due to his institutionalization. ECF No. 3. He also asserts that he has limited access to
11 the law library and limited knowledge of the law, and that an attorney would be better able to
12 present evidence at trial. Id. Plaintiff’s indigency, lack of legal knowledge, and limited access to
13 the law library are circumstances common to those who are incarcerated or civilly committed in
14 the state hospital and do not create exceptional circumstances. Any request for counsel based on
15 trial is also premature, as it has yet to be determined that this case will proceed to trial. Finally,
16 because the complaint does not state a claim for relief, the court cannot find, at this stage, that
17 plaintiff has a likelihood of success on the merits. For these reasons, the motions will be denied.

18 IV. Plain Language Summary of this Order for a Pro Se Litigant

19 Your request to proceed in forma pauperis is granted. That means you do not have to pay
20 the entire filing fee now. You will pay it over time, out of your trust account.

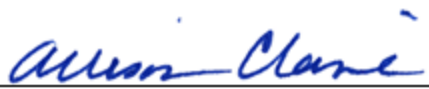
21 Your complaint will not be served because the facts you alleged are not enough to state a
22 claim. You have not alleged facts showing that the violation of your rights was due to a policy or
23 practice of the Shasta County Sheriff’s Department. To the extent you are attempting to claim
24 that your rights were violated by specific individuals, you have not explained how each person
25 violated your rights. You also have not included enough facts regarding the circumstances of
26 your arrest to show that it was unconstitutional. You may amend your complaint to try to fix
27 these problems. Be sure to provide facts that show exactly what each defendant did to violate
28 your rights or to cause a violation of your rights.

1 If you choose to file a first amended complaint, it must include all claims you want to
2 bring. Once an amended complaint is filed, the court will not look at any information in the
3 original complaint. **Any claims and information not in the first amended complaint will not**
4 **be considered.**

5 In accordance with the above, IT IS HEREBY ORDERED that:

- 6 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is GRANTED.
- 7 2. Plaintiff's motion for appointment of counsel (ECF No. 3) is DENIED.
- 8 3. Plaintiff's complaint fails to state a claim upon which relief may be granted, see 28
9 U.S.C. § 1915(e)(2), and will not be served.
- 10 4. Within thirty days from the date of service of this order, plaintiff may file an amended
11 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
12 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
13 number assigned this case and must be labeled "First Amended Complaint." Failure to file an
14 amended complaint in accordance with this order will result in a recommendation that this action
15 be dismissed.
- 16 5. The Clerk of the Court is directed to send plaintiff a copy of the complaint form used
17 in this district.

18 DATED: June 12, 2024

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20 ALLISON CLAIRE
21 UNITED STATES MAGISTRATE JUDGE
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